

Thomas Wentworth alias
Watson Esq; and Others,
Appellants.

The Lord Raby,
and Others,
Respondents.

The Respondents CASE.

William late Earl of Strafford became Indebted to Sir William Wentworth, the Respondent's Father, in several Sums of Money, amounting to 11662 l. part of which Debt did consist of the Arrears of the Annuity of 170 l. per Annum, payable to Sir William out of the Earl's Estate, other Part thereof was, for the Purchase of the Inheritance of this Annuity, and the Residue thereof did consist of several Sums of Money Lent and Advanced unto, and for the said Earl, and the Interest of such Moneys as were due from the Earl to Sir William.

These Debts were Contracted, and did accrue due to Sir William, between the year 1671. and the year 1681. and all these Debts are acknowledged to be due under the Hand and Seal of the said Earl, and are Secured by the Earl to Sir William by Eleven distinct Mortgages: Upon the Sealing of which Mortgages, the Vouchers Acquittances, and Proofs of the Money due from the Earl to Sir William, that were included in the said Mortgages, were all delivered up to the Earl.

In the year 1678. at the Earl's Request, Sir William goes over to Ireland to take Care of the Earl's Estate there, and was Impowered to Let and Set the Estate, and to Receive the Rents of it; and was so Successful and Serviceable to the Earl in this his Journey, as to Improve the Earl's Estate there from 2800 l. to about 7000 l. per Annum. Sir William, during this his Management of the Earl's Estate, did receive some part of the Earl's Rents, good part whereof Sir William remitted to the Earl in England, or otherwise Paid or Expended by the Earl's Order; And Sir William was always ready and willing to Account for what of the said Rents remained in his Hands.

Sir William being Cousin German to the Earl, and his next Heir Male, it was thought for the Interest of some Persons, to make a Breach between the Earl and Sir William; Whereupon the Earl was so far prevailed upon, as, in the year 1685. to Discharge Sir William from the Managing of the Earl's Estate in Ireland, and to Dispute the Payment of the Just Debts due from the Earl to Sir William, and Secured by the before mentioned Mortgages.

Whereupon Care being taken to advance and increase the Misunderstanding betwixt the Earl and Sir William; and Sir William having in vain tried all Means for the getting in any of these his Debts, or the Interest thereof, from the said Earl; and having Occasion for his Moneys, and no prospect of being paid any part thereof without Suit, Sir William was forced to seek his Remedy at Law; and accordingly in Michaelmas Term in the year 1685. did bring his Ejectment for Recovery of the Possession of the Mortgaged Premises; but was soon stoppt by an Injunction in the Court of Chancery, obtained by a Bill preferred there by the Earl against Sir William, suggesting, that Sir William was Indebted to the Earl for his Receipt of the Earl's Rents during Sir William's Management of the Earl's Estate.

But upon Hearing of the Cause on the 15th of November 1688. it appearing in the Earl's Answer to a Cross Bill exhibited against him by Sir William, That the Earl himself owned 10000 l. due from him to Sir William; and that the Earl did by his Answer acknowledge the Execution of the Eleven Mortgages for the Considerations therein mentioned. The Court Ordered, that the Earl's Receiver should bring into Court 2000 l. per Annum, towards Satisfying Sir William the Debt due to him on the said Mortgages.

The Revolution soon after happening, and Sir William dying in 1692. before things were settled in Ireland, there was never any Fruit made of this Order.

Sir William at his Death left Issue his Eldest Son William, who died in Flanders about Three Months after his Father; and the Respondent Thomas, now Lord Raby, his then Second Son.

The Respondent the Lord Raby being under Age, and in Flanders at the time of his Father's Death, Anne Wentworth, being the Lord Raby's Sister, Administred to Sir William her Deceased Father, and did revive the Suit against the Earl. But that Suit was immediately stoppt by the Earl Insisting on Privilege.

But after some time, the Cause coming on to be heard before the Lord Chancellor, He Ordered an Account to be Stated of what was due from the Earl to the Respondents, And that it should not be Incumbent upon the Respondents to prove the Payment of the Particular Sums mentioned in the Mortgages.

In October 1695. the Earl died. Upon whose Decease the Appellant enters upon his whole Estate, Claiming Title thereto under Colour of a Will pretended to be made by the Earl some short time before his Death. But the Appellant, although under Colour of the Will he took Possession of the Earl's Estate, yet refused to pay any of his Debts due to the Respondents. And these Suits after the Earl's Death being Revived, and the Cause coming again to be heard before the Lord Chancellor, upon Examinations taken to the Masters Report, who layd before the Court a Schedule pretended to be given to Dr. Hall, one of the Earl's Agents, which was insifted upon to comprehend the Particulars making up the Sums for which the said Mortgages were given, and in which some Errors were supposed to be made: The Court, upon a Full Hearing did then declare, That there was no Ground to give such Credit to the said pretended Schedule, as to alter the Account or Ravel into the Consideration of the said Eleven Deeds of Mortgages, or any of them.

At length, towards Satisfaction of this Just Debt due to the Respondents, the Court Ordered the several Tenants of the Mortgaged Premises, to bring into Court their respective Arrears of Rents, and their future accruing Rents, and the Moneys in their hands arising upon the Sale of Timber sold from the Premises.

As to the Rents, and Profits, received by Sir William from the Earl's Estate, during Sir William's Management thereof, and his Disbursements thereout; it is Reported by the Master, by his Report Dated the 10th of January 1700. That the Balance which remained in Sir William's Hands amounted to 4655 l. 19 s. 10 d. But the Respondent, in his now Appeal to the Lords, doth insift upon an Allowance for several Sums not allowed in the said Reports, amounting to 2671 l. 8 s. 6 d. which if allowed (as the Respondent hopes in Justice it ought) will reduce the Balance to 1984 l. 11 s. 4 d.

The Lords Commissioners of the Court of Chancery, Ordered, That what Moneys Sir William had in his Hands at the time he was Discharged of his Management of the Earl's Estate, should be applied towards Payment of the Moneys then due on the said Eleven Deeds of Mortgage.

By these Oppressive Proceedings, Commenced by the Earl in his Life time, and Vexatiously pursued by the Appellant since the Earl's Death, hath the Respondent been kept out of his Just Debt, having only about 5000 l. thereof which has been gained with great trouble and Expence, in pursuance of many repeated Orders of Court made for that purpose.

From these Proceedings of the Court of Chancery, the Appellant, being in possession of the Rents and Profits of the Mortgaged Premises, and making what advantage he can thereof by Felling Timber from the same, and notwithstanding that he himself for some time acquiesced under the said Proceedings, and Acted in Compliance of the same, did at length think fit, while the Respondent was beyond Sea in the Service of his Majesty, and Three Months after the Commencement of the Session of Parliament, purely for delay sake, to bring his Appeal.

And the Pretences of his Appeal are these:

The Appellant does insift, That the Court of Chancery in Ireland ought to open and ravel into the Account of the Moneys secur'd upon the respective Mortgages, upon Pretence of a Schedule alledg'd to be given in by Sir William to Dr. Hall, of the Sums insifted upon to make up the Considerations of the respective Mortgages, and of some supposed Mistakes contain'd in this Schedule.

Whereas these Mortgages were executed by the Earl above 30 years since, and are acknowledged by the Earl's own Answer to be by him executed for the Considerations therein mentioned; the Vouchers, and Proofs, making out the Consideration-Money of these Mortgages, are Sworn by Sir William's Answer to be all delivered up.

The Parties to these Mortgages are both dead, and there is not the least Evidence of any Fraud or Surprise in the obtaining these Mortgages: And the Reason why the Appellant insifts so much to ravel into these Mortgages, seems to be, because he must know, that at this time tis utterly impossible for the Respondent to make Proof of the Advancement of the Money. And as to the Schedule insifted upon, 'tis not so much as proved in the Cause to be given in by Sir William to Dr. Hall; 'tis not signed by Sir William, nor has any Date; and if it were to be allowed, 'twould be Evidence of above 500 l. more Moneys due from the Earl to Sir William than is comprehended in the Mortgages.

It is likewise complained by the Appeal, That the Order made by the Lord Chancellor Methwyn in 1699. declaring, that no such Credit ought to be given to the pretended Schedule, as to alter the Account, or ravel into the Consideration-Money of the Mortgages, is contrary to the former Orders and Decrees in this Cause; which the Lord Chancellor Methwyn could not, as is pretended, alter or vary from, without Rehearing the Cause.

Which Objection only relates to Matter of Form, and, as is apprehended, is in Fact mistaken, in regard the former Decree in this Cause in 1695. is, as is conceived, agreeable with the Order of the Lord Chancellor Methwyn, and is so far from raveling or opening the said Mortgages, that it expressly declares, That the Respondent shall not be put to prove the Payment of the particular Sums in the Mortgages.

The Appellant complains also, That he is not allowed the Sum of 20 l. in the Appeal mentioned, pretended to be due by a Note from Sir William: Whereas the Note is not proved in the Cause, and was never till very lately offered to be produced: It is dated above 26 years since; and several Accounts have passed betwixt the Earl and Sir William since the Date of the Note.

The Appellant likewise complains, That he is not allowed 249 l. 5 s. 4 d. in the Appeal mentioned, pretended to be paid by Dr. Hall, the Earl's Agent, to Sir Joshua Allen upon Sir William's Account.

Whereas there is no Proof of any such Payment, or of Order from Sir William for any such pretended Payment: And likewise there have been several Accounts passed betwixt the Earl and Sir William since the pretended Payment of the same.

It is likewise complained in the Appeal of the Order for the Appellant's bringing the Rents into Court, for Satisfaction of the Mortgage.

Whereas, in regard the Value of the Respondent's Security has been from time to time continually lessen'd by felling of Timber upon the Estate, and the Mortgage-Money increas'd by the growing Interest, the bringing the Rents for the future into Court, is but a reasonable and necessary Caution for the Security of a just Creditor.

It is likewise complained against the Order of Court, That the Accounts of Sir William's Receipts of the Earl's Rents, during his Management of the Estate, are not brought to a Balance until 1685. the Appellant insifting, That the Moneys received by Sir William on the Earl's Account ought, when, and as received by Sir William, to have from time to time been discounted out of the Mortgages.

Whereas Sir William never did refuse to pay any Money to the Earl during the time of his Management of the Earl's Estate; neither did the Earl demand any Account till 1685. and from that time only is it reasonable that the Moneys in Sir William's hands, by Receipt of the Earl's Rents, should be discounted out of the Mortgages; and 'twould cause multiplicity of Disputes to apply every one of the small Sums received by Sir William towards the Discharge of the Mortgages, when, within a very short time after, the same, or a greater Sum were often expended or returned by Sir William on the Earl's Account.

Upon the whole Matter, the Appellant that seeks Relief here against the several Acts and Deeds of the said Earl, is one that claim all the Earl's Estate under his pretended Will, which was an Estate that the Earl himself could have had no Power to have disposed of from Sir William, the next Heir-Male, had not Sir William himself, at the Earl's Request joined in the cutting of the Entail, in order to enable the Earl to raise Moneys for supplying his Occasions; and which Sir William complied with, upon the Earl's repeated Promises, That the Estate should come to Sir William at the Earl's Decease without Issue-Male; and the Respondent, against whom this Relief is sought, though he is the Earl's Heir-Male, and very near Relation, yet through the Means of false Insinuations, has nothing left him from the Earl, but a naked Honour.

What the Respondent claims, is Money due upon Mortgages secured by no less than 11 Deeds, and due about 30 Years since.

For the Recovery of this Debt, the Respondent and his deceased Father have been near 17 Years prosecuting in the Court of Chancery in Ireland.

And has now at length, after great Fatigue and Expence, almost brought this long and tedious Suit to a Conclusion in the Courts of Ireland.

But if your Lordships should be pleased to reverse the Decree there, and ravel into and open these Mortgages (which, as the Respondent hopes, your Lordships will see no just Cause so to do;)

Then the Respondent, besides the impossibility of proving the Payment of much the greatest Part of the Mortgage-Money expressed in these Deeds of Mortgages, cannot reasonably hope in less time than 17 Years longer to come to an end of his Suit.

For which, and other Reasons, the Respondent humbly hopes, That the Appellant's Appeal shall be dismissed with Costs, and that the Orders and Decrees made in this Cause shall be affirmed.

Wm. Peere Williams.